

§ 15A-533. Right to pretrial release in capital and noncapital cases.

(a) A defendant charged with any crime, whether capital or noncapital, who is alleged to have committed this crime while still residing in or subsequent to his escape or during an unauthorized absence from involuntary commitment in a mental health facility designated or licensed by the Department of Health and Human Services, and whose commitment is determined to be still valid by the judge or judicial officer authorized to determine pretrial release to be valid, has no right to pretrial release. In lieu of pretrial release, however, the individual shall be returned to the treatment facility in which he was residing at the time of the alleged crime or from which he escaped or absented himself for continuation of his treatment pending the additional proceedings on the criminal offense.

(b) A defendant charged with a noncapital offense must have conditions of pretrial release determined, in accordance with G.S. 15A-534.

(c) A judge may determine in his discretion whether a defendant charged with a capital offense may be released before trial. If he determines release is warranted, the judge must authorize release of the defendant in accordance with G.S. 15A-534.

(d) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community if a judicial official finds the following:

- (1) There is reasonable cause to believe that the person committed an offense involving trafficking in a controlled substance;
- (2) The drug trafficking offense was committed while the person was on pretrial release for another offense; and
- (3) The person has been previously convicted of a Class A through E felony or an offense involving trafficking in a controlled substance and not more than five years has elapsed since the date of conviction or the person's release from prison for the offense, whichever is later.

(e) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds all of the following:

- (1) There is reasonable cause to believe that the person committed an offense for the benefit of, at the direction of, or in association with, any criminal gang, as defined in G.S. 14-50.16A(1).
- (2) The offense described in subdivision (1) of this subsection was committed while the person was on pretrial release for another offense.
- (3) The person (i) has been previously convicted of an offense described in G.S. 14-50.16 through G.S. 14-50.20 or (ii) has been convicted of a criminal offense and received an enhanced sentence for that offense pursuant to G.S. 15A-1340.16E, and not more than five years has elapsed since the date of conviction or the person's release for the offense, whichever is later.

(f) There shall be a rebuttable presumption that no condition of release will reasonably assure the appearance of the person as required and the safety of the community, if a judicial official finds there is reasonable cause to believe that the person committed a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm; and the judicial official also finds any of the following:

- (1) The offense was committed while the person was on pretrial release for another felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a firearm.
- (2) The person has previously been convicted of a felony or Class A1 misdemeanor offense involving the illegal use, possession, or discharge of a

firearm and not more than five years have elapsed since the date of conviction or the person's release for the offense, whichever is later.

(g) Persons who are considered for bond under the provisions of subsections (d), (e), and (f) of this section may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community. (1973, c. 1286, s. 1; 1981, c. 936, s. 2; 1997-443, s. 11A.118(a); 1998-208, s. 1; 2008-214, s. 4; 2013-298, s. 1; 2017-194, s. 19.)